

[No. 47]

**SUPPLEMENT TO FULL COMMITTEE HEARING NO. 42 ON H. R. 8499
(H. R. 8710) TO AMEND THE ARMED SERVICES PROCUREMENT
ACT OF 1947**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D. C., Tuesday, January 24, 1956.

The committee met at 10:15 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order.

There is a quorum present, Mr. Smart?

Mr. SMART. A quorum is present, Mr. Chairman.

The CHAIRMAN. Members of the committee, let me make this brief statement.

Last Tuesday the committee considered H. R. 8499, and by unanimous report recommended the bill to be reported to the House.

When the staff went to work on the bill, to get up the report, they found that the language in that bill, on page 2, line 5 to line 16, did not—

Mr. NORBLAD. What is the number again, Mr. Chairman, the number of the bill?

The CHAIRMAN. Oh, the bill? You have it right before you. H. R. 8499. It is in H. R. 8710. Inside you will find H. R. 8499.

Now I will start over.

When the staff began to prepare the report, they found this language did not jibe with the thought that prevailed in committee.

From further study we found that we were also trespassing, probably, upon the jurisdiction of other committees.

So yesterday I prepared and dropped in the hopper 8710, with modified language which seeks to carry out what was the intent of the committee.

So at this point I will ask Mr. Smart to make a statement, and then Mr. Courtney.

Mr. Smart.

Mr. SMART. Mr. Chairman, as you have pointed out to the members, your clean bill, H. R. 8710, is identical in all respects to the bill reported by the committee on the 17th, H. R. 8499, in that it incorporates all of the amendments adopted by the committee, with one exception. The single change from the final action of the committee on H. R. 8499, and the clean bill, H. R. 8710, appears on page 2 of the new bill, on lines 9 through 12.

Mr. Chairman, as you pointed out to the members, following the final action of the committee on the 17th, we of the staff started preparing the report, justifying the action taken by the committee. When we came to the justification of the language on page 2 of the bill reported, lines 5 through 15, we ran into difficulty.

The members will recall that during the consideration of the bill it seemed to be the clear wish of the committee to preserve what we

called the status quo. Therein arose the trouble. What was the status quo that we were talking about?

You will recall, relative to the general broad negotiating authority of exception 2 (c) (1) of the Armed Services Procurement Act, the departments pointed out that they wished to restrict themselves and had done so by a new directive which became effective on January 1 of this year. They had restricted themselves, under 2 (c) (1) to five areas, one of which was to permit the contracting officer to make decisions on contracts up to \$100,000 instead of \$25,000, in the field of research and development contracts.

Three additional areas were programs in furtherance of small business, major disaster areas, and surplus labor areas.

The fifth was another catchall section which the committee rejected.

So the departments pointed out that if they were to continue to operate in the same manner as they had been under 2 (c) (1), that it would be necessary for the committee to write into specific exceptions in section 2 (c), following section 1, the authority to do so.

Now, when we talk about the status quo, what did the committee mean? Did it mean to preserve the authority which they were exercising under the general provisions of 2 (c) (1) in the field of surplus labor, small business and disaster areas, or did it mean to preserve their authority to negotiate contracts in those specific areas if such contracts were otherwise authorized by law?

I came to the conclusion that the latter was the intent of the committee.

In the first place, the committee, very properly, I think, consistently takes the position that it must not legislate in areas which are within the jurisdiction of other standing legislative committees of the House.

I think it is evident to all that we have no primary jurisdiction under the rules of the House in the areas of small business, in the areas of disasters, and in the areas of surplus labor.

There are other committees of the House—Banking and Currency, and perhaps Public Works through their programs—that are in those specific fields.

So that in trying to do what we thought the committee wanted to do we prepared new language which now appears on page 2 of the new bill, H. R. 8710, on lines 9 through 12.

A reading of that language clearly points out that if the negotiation of military procurement contracts in support of the three programs I have mentioned, is to be done under the Armed Services Procurement Act, it must be authorized by law coming from the committee of the Congress which has jurisdiction to legislate in that field.

So what we have tried to do, Mr. Chairman and members of the committee, is to restrict ourselves to our own jurisdiction and let the Congress in its wisdom provide such authority as it may wish in these other areas over which we have no jurisdiction.

The CHAIRMAN. Members of the committee, I think the statement Mr. Smart just made clarifies the issue completely.

So with that thought in mind, I think the proper thing for us to do is to reconsider our action in regard to H. R. 8499 and, if the committee reconsiders it, then to adopt the language in H. R. 8710 and report 8710 to the House.

Mr. RIVERS. Could I ask him one question, before you do?

The CHAIRMAN. Yes, sir.

Mr. RIVERS. Does that mean, Mr. Smart, before they can award a contract in a labor-surplus area by negotiation they first have to have legislation by this committee or a committee having jurisdiction.

Mr. SMART. The latter, Mr. Rivers.

Mr. RIVERS. Wait—

Mr. SMART. That is exactly the intent of this language, Mr. Rivers.

Mr. RIVERS. Wait a second.

Mr. SMART. Before they may negotiate military procurement contracts in support of a labor surplus area, the Congress must have so provided in another act of Congress.

Mr. RIVERS. And this act doesn't give them any such authority?

Mr. SMART. It does not, sir. And I would like to say in that regard, in the specific field of labor surplus areas, you will find good lawyers disagreeing as to what, for instance, the Defense Production Act grants by way of that authority.

Mr. RIVERS. Yes.

Mr. SMART. Because first you have the Defense Production Act and then you have an Executive order by the President.

Mr. RIVERS. That is right.

Mr. SMART. Then you have ODM directive No. 4. You can read the Defense Production Act until you are blue in the face, trying to find specific authority to negotiate. But you can't find it. If you will trace the act through the Presidential action down to directive No. 4 from ODM, you will find no clear-cut authority to negotiate or make set-asides for surplus labor areas. They are doing these things today under inferential authority.

I don't think this committee takes any position as to whether such authority is good, bad, or indifferent. Maybe the 37 members of this committee would unanimously vote to give that authority. But let that be brought from the committee that has jurisdiction over it. We should assume no jurisdiction over it here.

Mr. RIVERS. And this grants no such authority.

Mr. SMART. That is correct, sir.

The CHAIRMAN. Now, members of the committee, I think we understand everything—

Mr. BATES. Mr. Chairman.

The CHAIRMAN. Mr. Bates.

Mr. BATES. Now, Mr. Smart, amplifying on your latter statement.

Mr. SMART. Yes, sir.

Mr. BATES. Do you understand, then, that as far as your interpretation of the law is concerned, there is still authority in law to grant contracts to distressed areas?

Mr. SMART. Mr. Bates, I take no position as to whether there is or is not such authority.

Good lawyers disagree as to whether or not there is such authority. I would say today it is being done under an interpretation of the Defense Production Act and subsequent actions, official actions of the executive branch. Such authority is interpreted as having been granted by inference.

Mr. SHORT. But the authority must come from the committee that has proper jurisdiction.

Mr. SMART. But, Mr. Bates, I would not want to take any position on interpreting what an act of another committee of the Congress authorizes in these areas under discussion.

Mr. BATES. Mr. Chairman——

The CHAIRMAN. Let me say this: There is specific authority in the small-business legislation to do it.

Mr. BATES. Now, is that a fact?

The CHAIRMAN. Yes.

Mr. SMART. The Small Business Act contains some specific negotiating authority.

Mr. BATES. Mr. Smart says good lawyers will argue on that basis.

Mr. SMART. Not in the field of small business, as such.

Mr. BATES. I am talking about distressed areas. I am satisfied on small business.

Mr. SMART. All right.

Mr. BATES. I am talking about distressed areas. There is no question that when we eliminate 2 (c) (1) here, the authority which is clear under the provisions of this original bill will be taken away.

Now, the question is, What is the net effect?

Mr. SMART. The net effect is this, Mr. Bates: If the committee adopts the language in the new bill, in my judgment—and it is only my opinion—it would take away the negotiating authority in surplus labor areas as well as the set-asides presently being performed. I think that would be true.

But the Defense Production Act expires on the 30th day of June of this year. The Banking and Currency Committee must consider whether or not it shall be extended. And at the same time it would be within their jurisdiction and appropriate for them to determine the authority to contract either by sealed bid, by negotiation, by set-asides or however they want to do it, and then let the Congress pass upon that in a separate action.

Mr. RIVERS. But if it were a military contract, then we would have jurisdiction?

Mr. SMART. That is correct, sir, if they granted the authority.

Mr. RIVERS. Yes, sir.

The CHAIRMAN. Mr. Short, you desire to say anything on this?

Mr. SHORT. No, except, Mr. Chairman, to say I think it is most fortunate that counsel caught the error before we took the original bill on the floor of the House. We would have been in the bitterest dog-fight over there.

Mr. RIVERS. That is right.

Mr. SHORT. We are jealous of jurisdiction and prerogatives and we are not going to trespass upon the jurisdiction of other committees. We have to have the friendship of all of them in order to get legislation through the Congress. And I want to congratulate Mr. Smart.

Mr. RIVERS. I do, too, Mr. Chairman. I think it should be on the record.

The CHAIRMAN. I want to say this for the record.

I have been here for a long time and I have had the pleasure of serving with a great many chief counselors and chief clerks of the committee. I take my hat off to Mr. Smart. And when I pass out of this chair, I hope my successor will continue to have the valuable aid and assistance of Mr. Smart.

Now, in view of that statement, I am moving that H. R.——

Mr. NELSON. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. NELSON. Could I ask Mr. Smart a question, Mr. Chairman?

If, Mr. Smart, the actions which the Defense Production Administration are performing now of setting aside certain contracts to be allocated to labor surplus areas is there, then this new bill recognizes that they are authorized to do them?

Mr. SMART. Correct, sir.

Mr. NELSON. So that if the Defense Production Act is continued the way it reads today and their action in allocating contracts to labor surplus areas is valid, then this bill recognizes that as a legal act?

Mr. SMART. That is exactly what we propose to do, to preserve such legal authority as has otherwise or may hereafter be conferred.

Mr. RIVERS. Military contracts?

Mr. SMART. Such law as they have. We don't try to interpret that law. But I question whether or not that authority exists.

Mr. RIVERS. Military jurisdiction?

Mr. SMART. From a personal standpoint, I question it. But it may exist.

The CHAIRMAN. I move the committee that the committee reconsider its action in voting favorably on H. R. 8499, and on that, to keep the record absolutely straight, I ask for a rollcall.

All in favor of reconsideration of that bill, by which it was unanimously passed, when your name is called, vote "aye," and all opposed, vote "no."

(Rollcall.)

Mr. SMART. Mr. Chairman, on this vote there are 23 yeas——

The CHAIRMAN. How many?

Mr. SMART. 23 yeas and 2 have voted present.

The CHAIRMAN. A quorum being present, 23 having voted to reconsider H. R. 8499, and 2 having voted present, the committee reconsiders its action in favor of reporting H. R. 8499.

Now, members of the committee, I call up H. R. 8710, which as Mr. Smart has just stated is identical in every respect with H. R. 8499 except the language on page 2, lines 9 to 12——

Members of the committee, I move that H. R. 8710 be favorably reported to the House.

Mr. SMART. In lieu of H. R. 8499, sir?

The CHAIRMAN. No; we don't have to make that.

Mr. SMART. Yes, sir.

The CHAIRMAN. Well, you can say in lieu of. All right. You can add that to it, in lieu of 8499.

Now, call the roll.

All in favor of reporting favorably H. R. 8710, when your name is called, vote "aye, and all opposed vote "no."

(Rollcall.)

Mr. SMART. Mr. Chairman, on this vote there are 24 yeas, no nays, and 1, Mr. Bates, has voted present.

The CHAIRMAN. The bill is reported to the House.

And Mr. Smart, you and Mr. Courtney, fix up the report and Mr. Short and I will go before the Rules Committee and ask for a rule just as soon as the report is ready for filing.

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